

new source NPDES permits, except for the issuance of a new source NPDES permit from any State which has an approved NPDES program in accordance with section 402(b) of the Clean Water Act.

(b) *New Source Determination.* An NPDES permittee must be determined a *new source* before these procedures apply. New source determinations will be undertaken pursuant to the provisions of the permit regulations under § 122.29(a) and (b) of this chapter and § 122.53(h).

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982; 51 FR 32613, Sept. 12, 1986]

§ 6.603 Limitations on actions during environmental review process.

The processing and review of an applicant's NPDES permit application shall proceed concurrently with the procedures within this subpart. Actions undertaken by the applicant or EPA shall be performed consistent with the requirements of § 122.29(c) of this chapter.

[47 FR 9831, Mar. 8, 1982, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.604 Environmental review process.

(a) *New source.* If EPA's initial determination under § 6.602(b) is that the facility is a new source, the responsible official shall evaluate any environmental information to determine if any significant impacts are anticipated and an EIS is necessary. If the permit applicant requests, the responsible official shall establish time limits for the completion of the environmental review process consistent with 40 CFR 1501.8.

(b) *Information needs.* Information necessary for a proper environmental review shall be provided by the permit applicant in an environmental information document. The responsible official shall consult with the applicant to determine the scope of an environmental information document. In doing this the responsible official shall consider the size of the new source and the extent to which the applicant is capable of providing the required information. The responsible official shall not require the applicant to gather data or perform analyses which unnecessarily

duplicate either existing data or the results of existing analyses available to EPA. The responsible official shall keep requests for data to the minimum consistent with his responsibilities under NEPA.

(c) *Environmental assessment.* The responsible official shall prepare a written environmental assessment based on an environmental review of either the environmental information document and/or any other available environmental information.

(d) *EIS determination.* (1) When the environmental review indicates that a significant environmental impact may occur and that the significant adverse impacts cannot be eliminated by making changes in the proposed new source project, a notice of intent shall be issued, and a draft EIS prepared and distributed. When the environmental review indicates no significant impacts are anticipated or when the proposed project is changed to eliminate the significant adverse impacts, a FNSI shall be issued which lists any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(2) The FNSI together with the environmental assessment that supports the finding shall be distributed in accordance with § 6.400(d) of this regulation.

(e) *Lead agency.* (1) If the environmental review reveals that the preparation of an EIS is required, the responsible official shall determine if other Federal agencies are involved with the project. The responsible official shall contact all other involved agencies and together the agencies shall decide the lead agency based on the criteria set forth in 40 CFR 1501.5.

(2) If, after the meeting of involved agencies, EPA has been determined to be the lead agency, the responsible official may request that other involved agencies be cooperating agencies. Cooperating agencies shall be chosen and shall be involved in the EIS preparation process in the manner prescribed in the 40 CFR 1501.6(a). If EPA has been determined to be a cooperating agency, the responsible official shall be involved in assisting in the preparation of the EIS in the manner prescribed in 40 CFR 1501.6(b).

(f) *Notice of intent.* (1) If EPA is the lead agency for the preparation of an EIS, the responsible official shall arrange through OER for the publication of the notice of intent in the FEDERAL REGISTER, distribute the notice of intent and arrange and conduct a scoping meeting as outlined in 40 CFR 1501.7.

(2) If the responsible official and the permit applicant agree to a third party method of EIS preparation, pursuant to § 6.604(g)(3) of this part, the responsible official shall insure that a notice of intent is published and that a scoping meeting is held before the third party contractor begins work which may influence the scope of the EIS.

(g) *EIS method.* EPA shall prepare EISs by one of the following means:

(1) Directly by its own staff;

(2) By contracting directly with a qualified consulting firm; or

(3) By utilizing a third party method, whereby the responsible official enters into a *third party agreement* for the applicant to engage and pay for the services of a third party contractor to prepare the EIS. Such an agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's environmental information document and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract.

(ii) Select the consultant based on his ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project.

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS.

(h) *Documents for the administrative record.* Pursuant to 40 CFR 124.9(b)(6)

and 124.18(b)(5) any environmental assessment, FNSI EIS, or supplement to an EIS shall be made a part of the administrative record related to permit issuance.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

§ 6.605 Criteria for preparing EISs.

(a) *General guidelines.* (1) When determining the significance of a proposed new source's impact, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects and beneficial and adverse environmental impacts as defined in 40 CFR 1508.8.

(2) If EPA is proposing to issue a number of new source NPDES permits during a limited time span and in the same general geographic area, the responsible official shall examine the possibility of tiering EISs. If the permits are minor and environmentally insignificant when considered separately, the responsible official may determine that the cumulative impact of the issuance of all these permits may have a significant environmental effect and require an EIS for the area. Each separate decision to issue an NPDES permit shall then be based on the information in this areawide EIS. Site specific EISs may be required in certain circumstances in addition to the areawide EIS.

(b) *Specific criteria.* An EIS will be prepared when:

(1) The new source will induce or accelerate significant changes in industrial, commercial, agricultural, or residential land use concentrations or distributions which have the potential for significant environmental effects. Factors that should be considered in determining if these changes are environmentally significant include but are not limited to: The nature and extent of the vacant land subject to increased development pressure as a result of the new source; the increases in population or population density which may be induced and the ramifications of such changes; the nature of land use regulations in the affected area and their potential effects on development and the environment; and the changes in the availability or demand for energy and